United Nations A/56/315

General Assembly

Distr.: General
24 August 2001

Original: English

Fifty-sixth session
Item 173 of the provisional agenda*
Report of the United Nations Commission on International Trade Law on the work of its thirty-fourth session

Increase in the membership of the United Nations Commission on International Trade Law

Report of the Secretary-General**

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* A/56/150.

** The present report is submitted after the 3 July 2001 deadline because the thirty-fourth session of the Commission ended on 13 July 2001 and the final report on that session became available only a few days ago.

01-54672 (E) 250901

I. Introduction

1. In its resolution 55/151 of 12 December 2000, the General Assembly requested the Secretary-General to submit to it at its fifty-sixth session a report on the implications of increasing the membership of the United Nations Commission on International Trade Law and invited States to submit their views on that issue. By a note verbale dated 25 January 2001, the Secretary-General requested States to submit their views by 15 March 2001. The present report has been prepared pursuant to the request of the General Assembly. In order to assist the General Assembly in its consideration of the matter, the present report contains, beyond a discussion of the implications of an increase in the membership of the Commission, background information and a brief summary of comments by States and of the discussion at the thirty-fourth session of the Commission, which was based on a note by the Secretariat (A/CN.9/500).

II. Increase in the membership of the Commission and of other relevant organs

2. When established in 1966, the Commission had 29 member States.[1] That number was determined with a view to ensuring that the Commission would be small enough to be efficient but large enough to be representative of the principal economic and legal systems of the world, as well as of developed and developing countries.[2] In order to ensure equitable representation, the distribution of seats was as follows: eight from Western European and other States; seven from African States; five each from Asian States and Latin American States; and four from Eastern European States.[3]

3. In 1973, the General Assembly considered the question of increasing the membership of the Commission. At that time, the General Assembly confirmed the principle of adequate representation of the various legal and economic systems and of the developing and the developed world, as well as the principle of equitable geographical distribution of seats. After discussion in the Sixth Committee,[4] the General Assembly adopted resolution 3108 (XXVIII) of 12 December 1973, in which it decided to increase the number of members to 36. The distribution of the seven additional seats was as follows: two each from African States and Asian States; and one each from Eastern European States, Latin American States and Western European and other States. As a result, the current distribution of seats in the Commission is as follows: nine each from African States and Western European and other States (9 of 36, i.e. 25 per cent each); seven from Asian States (7 of 36, i.e. 19.4 per cent); six from Latin American States (6 of 36, i.e. 16.6 per cent); and five from Eastern European States (5 of 36, i.e. 13.8 per cent).

4. At its twentieth session, in 1987, the Commission decided to reconsider the matter and requested the Secretariat to prepare a report on the subject.[5] The Secretariat, in a note that was before the Commission at its twenty-first session, in 1988 (A/CN.9/299), recalled the decisions of the General Assembly with respect to the original membership in 1966 and the increased membership in 1973. Taking into account that, since 1977,[6] all States that were not members of the Commission had been invited to participate in sessions of the Commission and its working groups as observers on an equal footing with members, the Secretariat described the issue of the increase of the membership of the Commission as follows (A/CN.9/299, para. 11): "... the primary consequence of membership in the Commission may be that a member State will be more likely than a non-member State to be represented at meetings of the Commission and its working groups. ... Membership may affect both the ministry officials charged with substantive responsibility for international trade law and the financial authorities. In the former case membership may stimulate interest in the subject and better justify the expenditure of human resources to prepare for and to attend meetings. In the latter case membership may better justify the spending of the necessary funds."

5. In its note, the Secretariat confirmed that change in the number of member States would have no financial implications for the United Nations and went on to discuss the historical development of the size of working groups and the advantages that the increase in the size of working groups had. The main advantages cited were that broad participation increased the likelihood that a text would be properly balanced and acceptable to States (A/CN.9/299, para. 26).

6. During the discussion of the note, divergent views were expressed by members of the Commission. One view was that the membership should be increased substantially. In support, it was stated that such an increase of the membership would enhance awareness of the work of the Commission and interest in its achievements. It was also observed that such an increase would further the objectives of the Commission, since member States tended to take a favourable attitude towards acceptance of legal texts emanating from the work of the Commission. It was also pointed out that an increase of the membership could have a beneficial impact on participation since States were more likely to be represented at sessions of the Commission as members than as observers. Moreover, it was observed that the large number of States that had participated as observers and had made valuable contributions indicated that there existed a considerable interest beyond the 36 States that were currently members. The proponents of the increase in membership of the Commission did not propose any definite number since it was for the General Assembly to agree on an equitable and politically acceptable number.[7]

7. Another view was that it was not advisable for the Commission to recommend an increase of its membership. The valuable participation and contributions of non-member States had shown that States with an interest in the work of the Commission had full opportunity for active involvement and appeared to have used that opportunity. The remaining difference between a member State and a non-member State was the domestic question of the likelihood of its being represented at sessions. Moreover, it had not been established that the desire or need for an increase was felt in all regional groups alike and whether an increase would in fact increase active participation by States. Finally, it was felt that it was inopportune to recommend an increase of the membership at a time when the United Nations was undergoing a process of review about possible restructuring.[8] After deliberation, the Commission decided to defer its decision until its twenty-third session, in 1990. However, in 1990, the Commission decided to further postpone consideration of the matter.[9]

8. The membership of the International Law Commission has been increased three times so far: in 1956, from 15 to 21 members; in 1961, from 21 to 25 members; and, in 1981, from 25 to the present 34 members. Reasons cited for those increases included securing an adequate representation of the main forms of civilization and of the principal legal systems of the world (General Assembly resolution 1103 (XI) of 18 December 1956) and the substantial increase in the membership of the United Nations (General Assembly resolutions 1647 (XVI) of 6 November 1961 and 36/39 of 18 November 1981).

9. The Committee on the Peaceful Uses of Outer Space was established in 1958 with 18 members. In 1959, when the Committee became a permanent body of the General Assembly, it had 24 members. The membership of the Committee was last increased in 1994 from 53 to 61 members (General Assembly resolution 49/33 of 9 December 1994). Reasons cited for that increase included the need to take into account the significant increase in the membership of the United Nations, the importance of the subjects under consideration and the actual extent of participation in the Committee.[10] On the recommendation of the Committee,[11] the General Assembly adopted resolution 49/33, by which it gave two of the additional eight seats to each of the four regional groups that had expressed interest in having a greater representation in the Committee. At its forty-fourth session in 2001, the Committee decided to recommend increasing its membership by another four members.[12]

III. Implications

10. All States are invited to attend the meetings of the United Nations Commission on International Trade Law and its working groups. Documents relating to the work of the Commission and its working groups are issued for and distributed to all States. About 50-65 States attend the meetings of the Commission and its working groups and, as a matter of time-honoured practice, all States are invited to participate in the discussion and decision-making process, which is based on the principle of consensus.

11. In view of the relatively low incidence of expert representation from developing countries at sessions of the Commission and particularly of its working groups in recent years, owing in part to inadequate resources to finance the travel of such experts (A/49/739), a trust fund was established for providing travel assistance to developing countries that are members of the Commission. In its resolution 49/55 of 9 December

1994, the General Assembly welcomed the completion of the setting up of the trust fund for the Commission to grant travel assistance to developing countries that were members of the Commission, at their request and in consultation with the Secretary-General. In the same resolution, the Assembly appealed to Governments, the relevant United Nations organs, organizations, institutions and individuals, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to make voluntary contributions to the trust fund. That appeal is repeated every year in the General Assembly resolution on the report of the Commission. However, contributions to the trust fund have been very limited and, as a result, little assistance is provided to developing countries. Increasing the Commission's membership in itself would not result in any change in this respect, at least, to the extent that contributions to the trust fund are voluntary.

12. According to the Finance and Budget Section of the Division of Administrative and Common Services of the United Nations Office at Vienna, as far as servicing of conferences is concerned, there is little impact of an increase in membership to quantify. No impact is foreseen in interpretation, translation of pre- and post-session documents, and servicing of meetings, as the cost of those services is fixed irrespective of the number of members. As to in-session document reproduction, the impact is not expected to be material enough to be presented as a financial implication. There are no financial implications on the work of the secretariat of the Commission.

IV. Brief summary of comments by States

13. The Secretariat has so far received comments from 22 States (eight from Asian States, six from Latin American States, three from Eastern European States, two from African States and three from Western European and other States). All 22 States support an increase in the membership of the Commission. Reasons cited include: the need to align the membership of the Commission with the increased membership of the United Nations, so as to preserve the representative character of the Commission; the need to make possible the participation of States that, unless they are members, cannot justify the cost of participating in the work of the Commission; and the need to enhance the work of the Commission and to promote the acceptability of the work of the Commission by broadening the spectrum of representation.

14. At the size of the increase, several suggestions were made, ranging from 50 to at least 60 seats. In this regard, all States are mindful of the need to preserve the efficiency of the Commission. As to the allocation of the additional seats, several suggestions were made. In their comments, some States emphasized that consideration should be given to establishing an effective mechanism for providing financial assistance to developing countries that are members of the Commission with respect to the travel costs required for them to attend sessions of the Commission and its working groups.

V. Discussion at the thirty-fourth session of the Commission

15. At its thirty-fourth session, the Commission considered a note by the Secretariat (A/CN.9/500) containing a discussion of the history of the establishment and the past increase in the membership of the Commission and a summary of the comments submitted by Governments. The Commission generally agreed that its membership should be increased.[13] In order to increase actual participation, the suggestion was made that efforts to increase the voluntary contributions to the trust fund set up to assist delegates of developing countries in participating in meetings of the Commission and its working groups should be stepped up. The Commission endorsed that suggestion. As to the size of the increase, differing views were expressed ranging from 48 to 72 member States. The prevailing view was that the increase should not change the proportions of representation of regional groups or the working methods of the Commission. On that basis, the Commission recommended to the General Assembly that its membership should be increased from 36 to 72.

16. The concern was expressed, however, that doubling the membership might be excessive and affect the efficiency of the Commission. In addition, one delegation expressed the view that doubling the number of member States might set a precedent that might be difficult to follow for other organs of the

United Nations. However, it was widely felt that at the current session 74 States were represented and that fact had not affected the efficiency of the Commission, as evidenced by the adoption of two major texts. It was also stated that efficiency would not necessarily be reduced merely because the membership would be doubled. Regional groups were encouraged to conduct consultations in advance of the fifty-sixth session of the General Assembly and to agree on candidates for the new seats. At the close of the discussion, one delegation recalled its reservations regarding the size of the increase and stated that the issue needed to be discussed further in the context of the Sixth Committee of the General Assembly.

Notes

[1] Fourteen members were elected for a period of three years and 15 members were elected for a period of six years. The selection of the members elected within each of the five groups of States that would serve for three or six years was made by the President of the General Assembly by drawing lots. In subsequent elections, all members were to be elected for a period of six years (see General Assembly resolution 2205 (XXI) of 17 December 1966). In its resolution 31/99 of 15 December 1976, the General Assembly decided that membership would expire on the last day prior to the opening of the seventh annual session of the Commission following the date of election.

[2] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, document A/6396, paras. 225-229; and *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, document A/6594, para. 26

[3] *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 88, document A/6594, paras. 28-29.

[4] Ibid., *Twenty-eighth Session, Annexes*, agenda item 92, document A/9408.

[5] Ibid., *Forty-second Session, Supplement No. 17* (A/42/17), para. 344.

[6] See *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), para. 74 and General Assembly resolution 31/99, para. 10 (b); see also paragraph 7 (c) of Assembly resolution 38/134 of 19 December 1983.

[7] *Official Records of the General Assembly, Forty-third Session, Supplement No. 17* (A/43/17), paras. 112 and 113.

[8] Ibid., paras. 114 and 115.

[9] Ibid., *Forty-fifth Session, Supplement No. 17* (A/45/17), para. 65

[10] Ibid., *Forty-ninth Session, Supplement No. 33* (A/49/33), paras. 47 and 48.

[11] Ibid., *Supplement No. 20* (A/49/20), para. 156.

[12] Ibid., *Fifty-sixth Session, Supplement No. 20* (A/56/20 and Corr.1), para. 206.

[13] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* (A/56/17), paras. 370-375.